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HAPPENINGS FROM THE HILL

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OSHA Reform Legislation to be Introduced

The long-awaited package of legislation from Senator Michael Enzi (R-WY) is expected to be introduced in the Senate sometime in the next day or two. AIHA has discussed this legislation several times over the course of the last few months and has reviewed the bills that will be forthcoming. It looks as though the measures to be introduced will be nearly identical to what we expected.

Here's a quick look at the three measures expected to be introduced:

Bill 1 – Occupational Safety Partnership Act.

This bill that will include the creation of a third-party workplace review program. The concept, first pushed by AIHA several years ago, will allow employers to hire qualified third party OH&S personnel to review the workplace and, for a positive review, employers would receive exemption from the OSHA routine inspection list for one year.

AIHA had suggested to Senator Enzi that the program be put in place as a pilot program in three states and limited to small business, but the Senator decided to go with the original proposal.

Also included in the bill are several other recommendations. These include:

- Alcohol and substance abuse employee testing
- Codification of the Voluntary Protection Program
- Expansion of the VPP or alternative programs for small business
- Technical assistance program
- Professional certification and continuing education for certain OSHA personnel
- Industry training initiative to educate OSHA personnel

This bill faced considerable opposition in the last Congress, mostly because of a provision regarding criminal penalties and the section on alcohol and substance abuse testing. The bill is still likely to face some opposition.

Bill 2 – Occupational Safety Fairness Act.

This bill will be the most controversial of the three measures. It rolls into one bill the four Norwood bills and the six Tiart bills to provide various changes to OSHA. The one issue that was not included in this measure was a section that would have increased criminal penalties for willful violations of the OSH Act. Many, including AIHA, suggested that inclusion of this section would most assuredly doom the bill. Even without this section, the bill will face considerable opposition.

Some of the issues within the measure:

- Vacating citations for certain compliance methods
- Discretionary compliance assistance (issue warnings rather than citations in some cases)
- Expanded Inspection Methods (using alternative methods for investigation)
- Increase membership of Occupational Safety and Health Review Commission
- Awarding attorney fees and costs in certain cases
- Provides rulings by the Review Commission judicial deference
- Extending time to contest citations
- Right to correct conditions within 72 hours
- Requires written statement to employer following inspection
- Citations to be issued within 30 days
- Contesting citations deadline extended
- Amends repeat violation penalties
- Third party misconduct
- Allows OSHA to cite employees in certain cases

One additional section that could be of significant interest to AIHA is a section that addresses consensus standard setting. While the exact language has not yet been reviewed, those who have read the summary agree that this section may be an attempt to address the ongoing controversy over the OSHA reference to ACGIH TLVs. The section requires organizations that establish limits and values pursuant to regulation, but without independent review, to fully comply with the current statutory requirements for such national consensus standard setting organizations. The section discusses procedural fairness and transparency.

Bill 3 – HazCom Simplification and Modernization Act of 2005.

If one of these bills stands a good chance of passage this is the one. AIHA is pleased that Senator Enzi agreed with AIHA and others suggestion that if he truly wanted to make changes to MSDSs and look at the Globally Harmonized System, the issue had to be introduced as a separate measure. Senator Enzi took it one step further and has secured Senator Patty Murray (D-WA) as a co-sponsor in the hope that a bi-partisan measure would stand a good chance of passage.

The bill requires OSHA to develop model MSDSs and establishes a commission to consider and

make recommendations to Congress on whether or not to adopt the UN Globally Harmonized System of Classification and Labeling of Chemicals, commonly referred to as the GHS.

AIHA has prepared comments on many of the sections within the bills and will be submitting these comments following official introduction of the measures.

Will There Be a 2006 Budget?

It's beginning to look like continuing resolutions to keep the government afloat may be the rule of the day. With Congress still debating how to pay for hurricane relief, no word yet on when a 2006 budget will be enacted. However, amid the discussion, don't be surprised if OSHA and NIOSH both take a hit when the final dollars are allocated. Congress continues to search for extra dollars and the word is they will look at agencies where the impact will have little opposition from their constituents. Members of Congress believe OSHA and NIOSH are two such areas.

OSHA Semi-Annual Regulatory Agenda Shows Little Activity

In a continuing effort to reduce the regulatory agenda, the latest semi-annual agenda from OSHA seems to be accomplishing the task. The administration has made an effort over the last several years to reduce the agenda to "only those items that can actually be accomplished". However, many are beginning to question whether or not any of the items on the agenda will ever be concluded.

Here is a look at items of interest to AIHA:

Prerule Stage

- Occupational Exposure to Crystalline Silica. The agency hopes to have a complete peer review of health effects and risk assessment completed by April 2006. The agency hopes to address the outdated permissible exposure limits within the rule.
- Occupational Exposure to Beryllium. The agency denied a petition to issue an emergency temporary standard back in 1999 and 2001. At the time, OSHA began to solicit information to determine the health effects of exposure to beryllium. OSHA is using the information gathered to develop a proposed rule. The Agency hopes to have a small business review report completed in February 2006.
- Ionizing Radiation. The Agency is considering whether or not to amend the existing regulation, adopted back in 1974. OSHA is in the process of reviewing information and will determine a course of action when the review is completed.
- Emergency Response and Preparedness. OSHA is also collecting information to evaluate what action should be taken regarding this issue. OSHA agrees there are numerous outdated standards that need to be consolidated and updated, but no decision has been made.

- **Lead in Construction.** The Agency plans to consider the continued need for the rule. Information is currently being gathered (AIHA submitted comments this past August) and the review is not to be completed until September 2006. At that time a decision is expected.
- **Hazard Communication.** A major issue. OSHA is considering modifying the rule to make it consistent with the Globally Harmonized System as well as take a look at new guidelines for MSDSs. An advanced notice of proposed rulemaking is the next step in this process.

Of the items listed in the pre-rule stage, expect the Hazard Communication issue to receive the most attention in the coming year.

Proposed Rule Stage

The proposed rule stage includes only four items. AIHA will monitor these items, but none of the four are on a priority list for AIHA.

Final Rule Stage

This is the area where there is the most debate over the Agency and its efforts to produce.

- **Assigned Protection Factors.** The Agency says final action is expected in March 2006. This action would complete the 1998 standard and establish definitions and specific requirements within the respiratory protection standard.
- **Occupational Exposure to Hexavalent Chromium.** By court order, the final rule must be issued by mid-January 2006. Until recently, OSHA had been on track with this proposal. Now we learn that the Agency failed to provide the Office of Management and Budget with the proposal in order for OMB to conduct the usual 90 day review. Now word comes that the Agency admits it is behind schedule because of the hurricane response. The Agency says it will submit the rule to OMB by the end of November. It has also been learned that the rule is more than 1,000 pages. Don't be surprised if for some unknown reason the court-mandated date of January 18 for the rule is extended.
- **Employer Payment for Personal Protective Equipment.** Final action on this long-awaited rulemaking has been moved to March 2006. The proposal, begun in 1999, has been opened for comments several times, the most recent being in July 2004. Some Members of Congress have called on the Agency to adopt a final rule, but the Agency has yet to move forward. The regulatory agenda says the "Agency continues to consider how to address this issue".

That's it for the final rule stage.

Long-Term Actions

The only significant issue of the three items in the long-term action category is "Hearing Conservation Program for Construction Workers". AIHA recently sent a letter to OSHA urging

them to move forward with this rule and to remove it from the long-term category. No response from the Agency was received.

Michigan Ergonomics Debate Continues

Ergonomics and Politics are at center stage in Michigan as the debate continues over whether or not the state should continue its efforts to draft an ergonomics standard. The debate centers around whether or not the state ergonomics panel has the right to continue work on drafting a standard. The legislature included language in the recent appropriations bill that prohibits the state OSHA from spending any money to continue its work. The Governor signed the budget bill, but has now declared this language within the bill “unconstitutional”. As such, the panel continues to do its work. Opponents of an ergonomics standard contend the language is legal and are weighing their options. In the meantime, a state lawmaker is preparing to introduce legislation that would prevent Michigan from enacting ergonomics requirements more stringent than those imposed by federal OSHA. And of course, federal OSHA has no requirements. Stay tuned – there seems to be news on this issue every week.

Federal and State Legislative Action Centers

Visit the AIHA Federal Legislative Action Center to stay abreast of national issues important to occupational health and safety. The center can be found within the members-only section of the AIHA web page.

The State Center offers AIHA members the opportunity to monitor all state legislative sites, scan IH professional recognition/title protection laws in states where adopted, and even review and follow all state legislation being monitored in the state legislatures throughout the year. Included under each State site is access to the various state agencies, including the Governor’s office and OSHA state plan sites. If professional recognition/title protection legislation has been enacted in a particular state, this law can also be found.

Another important feature is member access to each of the weekly legislative/regulatory reports sent to each state. With this access, members can follow any piece of legislation that may be of interest.

For information on any of the items in this report, please contact Aaron Trippler.